JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
14 February 2001 *

In Case T-115/99,

Système Européen Promotion (SEP) SARL, established in Saint-Vit (France), represented by J.-C. Fourgoux, lawyer, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented initially by G. Marenco and L. Guérin and, subsequently, by Mr Marenco and F. Siredey-Garnier, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for the annulment of the Commission decision of 8 March 1999 rejecting a complaint by the applicant based on Article 85 of the EC Treaty (now Article 81 EC) and on Commission Regulation (EC) No 1475/95 of 28 June

* Language of the case: French.

1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1995 L 145, p. 25),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Second Chamber),

composed of: J. Pirrung, President, A. Potocki and A.W.H. Meij, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 20 September 2000,

gives the following

Judgment

Facts and procedure

1 The applicant, Système Européen Promotion (SEP), is a company whose main object, according to Article 2 of its statutes, is 'to purchase, sell, lease and finance new and secondhand vehicles and to act as an intermediary in accordance with EEC [Regulation] No 123/85 '.

2 On 31 January 1997 the applicant, together with several consumers who had authorised it to acquire vehicles, lodged a complaint with the Commission under Article 3(2) of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition, First Series 1959-1962, p. 87) against Renault France, the motor vehicle manufacturer (hereinafter 'Renault'), its subsidiary, Renault Nederland, and a dealer, Renault Autozenter in Schagen (Netherlands).

3 The complainants stated that on 23 October 1996 Renault Nederland had sent a circular to Netherlands dealers asking them, at the request of Renault France, to reduce orders for vehicles for export, informing them that cars delivered for export would not be taken into account for the purposes of the annual quota and the dealers' bonus.

4 Following that circular, Renault Autozenter informed the applicant that it could no longer order cars for export because it was afraid of upsetting its relations with Renault Nederland. On 23 December 1996 Renault Autozenter announced that cars ordered would be delivered on the following conditions:

— no discount on the tax-free price,

— payment for the car before the order is passed on to Renault,

— lengthy delivery periods due to 'huge sales in Holland'.

5 The complainants sought automatic withdrawal from Renault of the block exemption under Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1995 L 145, p. 25), a finding that it had infringed Article 85(1) of the EC Treaty (now Article 81(1) EC) by partitioning the market and fixing prices, and the adoption of interim measures.

6 On 7 February 1997 the Syndicat des Professionnels Européens de l'Automobile ('SPEA'), an organisation of authorised intermediaries, but of which the applicant is not a member, also lodged a complaint with the Commission. The two complaints were registered under the same number (IV/36395). The applicant and the SPEA were represented by the same lawyer.

7 In letters to the Commission dated 10 and 28 March 1997 the applicant's lawyer confirmed on the applicant's behalf that it was maintaining its application for interim measures, since contacts between the applicant and Renault had not resulted in the delivery of the vehicles ordered.

8 By letter of 17 July 1997 the applicant's lawyer informed the Commission that talks were in progress with Renault to settle the supply problems encountered by 'authorised agents' in the Netherlands following the circular of 23 October 1996. According to that letter, the circular at issue had been withdrawn and all vehicles ordered between 26 October 1996 and 24 February 1997, the date of the withdrawal, were in the process of being delivered. However, the letter stated that Renault apparently had no intention of ending the offending anti-competitive practices. The delivery problems, in particular as regards dates, remained unresolved and were spreading to other States of the European Union and to other French manufacturers, such as Peugeot.

9 On 8 January 1998 the Commission sent the applicant a communication under Article 6 of Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition, First Series 1963-1964, p. 47). In it the Commission made the following points in particular:

'[T]he model concerned, the Renault Scenic, was being launched in the Netherlands at that time and ... the unexpected measure of its success resulted in lengthy delivery periods. Taking into account the ambiguous nature of a circular issued by its Netherlands subsidiary, it is clear that the manufacturer and its distribution network have done their utmost to reach a satisfactory arrangement for all those consumers who did not receive satisfaction in this matter and who, according to Renault, have now all taken delivery of the vehicles they ordered. The offending conduct you complained of has therefore ceased.'

10 On 17 February 1998 the applicant submitted its comments on that communication.

11 By decision of 8 March 1999 the Commission rejected the applicant's complaint (hereinafter 'the contested decision').

12 By application lodged at the Registry of the Court of First Instance on 12 May 1999 the applicant brought the present action.

13 By decision of the Court of First Instance of 6 July 1999, the Judge-Rapporteur was assigned to the Second Chamber, to which this case was itself subsequently assigned.

14 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure. The parties presented oral argument and replied to the Court's questions at the hearing on 20 September 2000.

Forms of order sought by the parties

15 The applicant claims that the Court should:

— annul the Commission's decision of 8 March 1999;

— take formal note that the applicant reserves the right to bring an action against the Commission under Article 215 of the EC Treaty (now Article 288 EC);

— order the Commission to pay the costs.

16 The Commission contends that the Court should:

— dismiss as inadmissible the request that the Court of First Instance should take formal note that the applicant reserves the right to bring an action under Article 215 of the Treaty;

— dismiss the action as unfounded;

— order the applicant to pay the costs.

Admissibility

17 The Commission claims that the request that the Court should take formal note that the applicant reserves the right to bring an action for damages against the Commission is inadmissible. The applicant argues that an action for damages is an independent cause of action, separate from an action for annulment.

18 The Court finds that in proceedings before the Community judicature there is no remedy whereby the Court can 'take formal note' that one of the parties reserves the right to bring an action. This form of order is therefore inadmissible.

Substance

19 The applicant relies on two main pleas.

The first plea, alleging infringement by the Commission of its obligations when dealing with the complaint

Arguments of the parties

20 The first plea is divided into three main limbs. In the first limb the applicant contends that the Commission exceeded the limits of its discretion as to the degree of priority to be accorded to investigation of complaints, those limits being set out in Case C-119/97 P *Ufex and Others* v *Commission* [1999] ECR I-1341. The Commission failed to have regard to the fact that, before it decides to take no further action on a complaint, it must not merely establish that the offending conduct has ended but must also ascertain whether the effects of the infringement continue to exist. In this case, the Commission underestimated the seriousness of the infringement and the duration of its effects. In addition, it took political considerations into account, which is incompatible with the rules laid down in *Ufex and Others* v *Commission.*

21 The applicant considers that the Commission cannot rely on decisions against other manufacturers regarding similar conduct without considering the particular facts of each case and the seriousness of the alleged infringements. It contends that Commission Decision 92/154/EEC of 4 December 1991 relating to a proceeding under Article 85 of the EEC Treaty (Case IV/33.157 — Eco System/ Peugeot) (OJ 1992 L 66, p. 1) and the actions brought following that decision (Case T-9/92 *Peugeot* v *Commission* [1993] ECR II-493, and Case C-322/93 P *Peugeot* v *Commission* [1994] ECR I-2727) are not sufficient to justify the conclusion that there is an insufficient Community interest. The existence of such an interest is demonstrated by the Commission's intervention in a similar case, by the adoption of Decision 98/273/EC of 28 January 1998 relating to a proceeding under Article 85 of the EC Treaty (Case IV/35.733 — VW) (OJ 1998 L 124, p. 60, hereinafter 'the *VW* case'). The applicant alleges that its complaint was treated less favourably than the complaints at the origin of the *VW* case.

22 The applicant claims that the possibility of referring the matter to a national court does not justify rejection of its complaint, since the withdrawal of a block exemption falls within the exclusive competence of the Commission. Furthermore, the Commission is better equipped to carry out an investigation than national courts and it is impossible for the applicant to obtain the evidence required by those courts. By way of example it cites a judgment of the Tribunal d'instance de Besançon (District Court, Besançon) of 16 March 1999, which ordered it to compensate a customer for the delay in delivering a vehicle, on the ground that it had not been able to prove that the manufacturer had acted deliberately and that the anti-competitive practice had been applied specifically to the car concerned.

23 The applicant maintains, moreover, that the Commission erred in its assessment of the facts placed before it, in particular those in the annex to its letter of 17 July 1997.

24 Lastly, the Commission's failure to act means that manufacturers can restrict intra-Community trade. Thus, on 21 January 1999, Renault Nederland informed the applicant, on the pretext of an increase in demand, that the 11% discount previously given would be reduced to 2%.

25 In the second limb of its plea the applicant contends that insufficient reasons were given for rejecting the complaint.

26 The third limb of the plea alleges that the investigation by the Commission in this case was inadequate. The applicant criticises the Commission in particular for failing to check whether the delivery periods for vehicles ordered through authorised intermediaries were less favourable than those for vehicles purchased by Netherlands customers.

27 The Commission contends that it complied with the obligations laid down in the case-law concerning investigation of a complaint and explained in detail the grounds on which it concluded that there was no Community interest involved. It considers that the allegation that it failed to take into account the future effects of the practice at issue is unfounded.

28 As regards the second limb of the plea, the Commission contends that an inadequate statement of reasons for the contested decision cannot be inferred from its failure to investigate whether Renault's delivery periods in the Netherlands discriminated against authorised intermediaries' foreign customers.

29 As regards the third limb of the plea, the Commission states that it did conduct an investigation of the complaint. It submits, however, that the applicant's assertions that the shortage invoked to justify the delivery periods was handled deliberately by Renault in a way that prejudiced authorised intermediaries, could have been confirmed only by conducting in-depth investigations. The Commission was not prepared to undertake such investigations in view of its available resources and the evidence already communicated by the manufacturer, since the case had already been settled by delivery of the vehicles to the customers and could be referred to the national courts, which were quite capable of deciding it. The Commission adds that its investigations enabled it to conclude that the delays in delivery experienced by the customers of authorised agents could have resulted from the relative shortage of vehicles, which Renault took steps to overcome.

Findings of the Court

30 The Commission's obligations when a complaint is referred to it have been laid down in settled case-law (see in particular *Ufex and Others* v *Commission*, referred to in paragraph 20 above, paragraph 86 et seq.).

31 It is apparent from that case-law that when it decides to assign different priorities to the examination of complaints submitted to it, the Commission may not only decide on the order in which they are to be examined but also reject a complaint on the ground that there is an insufficient Community interest in further investigation of the case (see Case T-5/93 *Tremblay and Others* v *Commission* [1995] ECR II-185, paragraph 60).

32 The discretion which the Commission has for that purpose is not unlimited, however. First, the Commission is under an obligation to state reasons if it declines to continue with the examination of a complaint, and those reasons must be sufficiently precise and detailed to enable the Court effectively to review the Commission's use of its discretion to define priorities.

33 Second, in deciding to take no further action on a complaint against those practices on the ground of lack of Community interest, the Commission cannot rely solely on the fact that practices alleged to be contrary to the Treaty have ceased, without having ascertained that anti-competitive effects have ceased and, if appropriate, that the seriousness of the alleged interferences with competition or the persistence of their consequences has not been such as to give the complaint a Community interest (see *Ufex and Others* v *Commission*, cited in paragraph 20 above, paragraphs 89 to 95).

34 Review by the Community judicature of the exercise of the Commission's discretion must not lead it to substitute its assessment of the Community interest for that of the Commission but focuses on whether or not the contested decision is based on materially incorrect facts, or is vitiated by an error of law, a manifest error of appraisal or misuse of powers (Case T-24/90 *Automec* v *Commission* [1992] ECR II-2223, paragraph 80 and Joined Cases T-9/96 and T-211/96 *Européenne automobile* v *Commission* [1999] ECR II-3639, paragraph 29).

35 It is not apparent from the contested decision that the Commission has failed to comply with the principles laid down in the case-law regarding the extent of its obligations. The contested decision shows that the Commission carefully examined the applicant's evidence. Nor do the arguments in that decision with regard to the assessment of the Community interest in continuing the investigation of the complaint justify a finding that the Commission failed to comply with the principles laid down in the case-law in that respect.

36 In particular, there is no foundation for the allegation that the Commission merely established that the offending conduct had ended in order to justify its taking no further action on the complaint and did not check whether the effects of the infringement continued to exist. The statement that the alleged infringement had ended, contained in paragraph 7 of the contested decision, is neither the only, nor the most significant, ground for rejecting the complaint.

37 The Commission observes first of all that the legal position of authorised motor vehicle intermediaries has been clarified by its decisions, by case-law and by the new block exemption regulation (Regulation No 1475/95). It states that this clarification enables national courts to apply the Community competition rules in cases concerning the activity of intermediaries in the distribution of motor vehicles, and it refers to its policy of decentralising the application of Community competition law.

38 The Commission goes on to point out that the investigative measures which would be needed in order to establish the infringements alleged by the applicant, should they exist, would be disproportionate and it is only in that context that it states that those infringements took place in the past. Lastly, the Commission states that Renault provided a plausible explanation for one aspect of its conduct criticised by the applicant, namely the excessive length of the delivery periods.

39 In that connection, the judgment in *Ufex and Others* v *Commission*, cited in paragraph 20 above, cannot be interpreted as meaning that the Commission must not take into consideration the fact that the infringement has ended. The Court of Justice merely held that the Commission's duties in the field of competition could not be interpreted as meaning that investigation of a complaint concerning past infringements is not one of the duties entrusted to the Commission by the Treaty.

40 It should be added that the situation which gave rise to the judgment in *Ufex and Others* v *Commission*, cited in paragraph 20 above, was quite different from the situation at issue in the present case. That case concerned a complaint of infringement of Article 86 of the EC Treaty (now Article 82 EC) which, according to the complainants, had lasted from 1986 to 1991 and had caused structural imbalances on the market concerned, which was a market having a Community dimension (see Case T-77/95 RV *Ufex and Others* v *Commission* [2000] ECR II-2167, paragraph 26).

41 In the present case, the conduct which gave rise initially to the complaint, namely the circular issued by Renault Nederland and the consequent stance adopted by Renault's Netherlands dealers, took place between October 1996 and February 1997. The applicant did not provide any evidence of an alteration in the structure of the market as a result of the alleged infringement. Admittedly, it cannot be ruled out that potential customers of authorised agents may have turned to the official network as a result of the conduct referred to in the complaint. This did not, however, prevent the applicant from continuing its activity. Furthermore, this was a temporary effect on the market, which was liable to disappear when the obstacles to parallel imports were lifted.

42 In the absence of specific evidence of a permanent alteration in the structure of the market, the Commission did not therefore err in law with regard to assessment of the Community interest by not expressly investigating whether any anti-competitive effects of the alleged infringement continued to exist.

43 The complaint alleging in this context that the Commission took 'political considerations' into account is not supported by any specific evidence establishing that the Commission based its decision on considerations which were irrelevant to a correct assessment of the Community interest. In that connection the Commission may reasonably argue that it is given authority to implement competition policy, which does not mean that its task is to settle individual disputes. Consequently, that complaint is unfounded.

44 Furthermore, it is reasonable for the Commission, when assessing the Community interest in investigating a complaint, to take account of the need to clarify the legal position relating to the conduct alleged in the complaint and to define the rights and obligations under Community competition law of the various economic operators affected by that conduct (see *Européenne automobile* v *Commission*, cited in paragraph 34 above, paragraph 46).

45 In this case, the contested decision rightly refers to the Commission decisions and to the case-law of the Court of Justice which have clarified the obligations on members of the distribution network with regard to authorised intermediaries and defined what is meant by that term (see the *Eco System* decision and the judgments relating thereto, and the decision in the *VW* case, cited in paragraph 21 above). Similarly, the rights and obligations of authorised intermediaries, car manufacturers and dealers have been defined and set out in Regulation No 1475/95.

46 It should be added that the allegation that the complainants were discriminated against in this case in comparison with those in the *VW* case is unfounded. Where it is faced with a situation in which numerous factors give rise to a suspicion of anti-competitive conduct on the part of several large undertakings in the same economic sector, the Commission is entitled to concentrate its efforts on one of the undertakings concerned, whilst at the same time indicating to the economic operators who may have suffered damage as a result of the anti-competitive conduct of the other undertakings concerned that it is open to them to bring an action in the national courts. If it were otherwise, the Commission would be

forced to spread its resources across a number of separate wide-ranging investigations, with the attendant risk that none could be brought to a satisfactory conclusion. The benefit to the Community legal order stemming from the exemplary value of a decision with regard to one of the undertakings in breach of the competition rules would then be lost, in particular for the economic operators injured by the conduct of the other companies (see *Européenne automobile* v *Commission*, cited in paragraph 34 above, paragraph 49).

47 So far as the possibility of referring the matter to a national court is concerned, the Court cannot uphold the applicant's argument that the subject of its complaint falls within the exclusive competence of the Commission as it relates in particular to withdrawal of the benefit of the block exemption. Article 6(1), point 7, of the block exemption regulation, Regulation No 1475/95, provides that, *ipso iure*, the block exemption does not apply where restrictions are placed on the activities of authorised intermediaries. Unlike Article 10 of Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the EEC Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1985 L 15, p. 16), which provided that such conduct might give rise to withdrawal of the block exemption, that provision may be applied by the national courts.

48 Nor has the applicant established a manifest error on the part of the Commission as regards the capacity of national courts to protect its rights under Community competition law with regard to Renault. The ruling of the Besançon court cannot be relied on by the applicant against the contested decision, since it post-dates that decision (see Joined Cases T-371/94 and T-394/94 *British Airways and Others and British Midland Airways* v *Commission* [1998] ECR II-2405, paragraph 81).

49 As for the complaint that the Commission committed an error of assessment with regard to the items of evidence submitted by the applicant in the annex to its letter of 17 July 1997, an examination of those documents provides no grounds

for a finding that the Commission underestimated the seriousness of the infringement and the Community interest in continuing the investigation.

50 Thus, the letter of 11 April 1997 from one of Renault's German dealers to a member of the SPEA, informing it that the Scenic and Espace models could not be delivered until October that year, gives the shortage of vehicles as the reason for this. It does not give any other reasons for the delay.

51 Further, that letter undermines the complaint that the Commission took into account inaccurate statements made by Renault in a letter of 24 July 1997 (namely that a rush of orders had started in October 1996, when the quota restrictions resulting from that rush were not communicated to the German network until April 1997). The letter does not state that the rush of orders started in October 1996, but that the forecasts of sales of the Scenic model had been prepared in the course of that month and revised in January 1997.

52 Nor does the circular from Renault Germany of 8 July 1997 annexed to the applicant's letter of 17 July 1997, which prohibited dealers from reselling 'to resellers unless they are members of the Renault distribution network', prove that the Commission failed to take into account the evidence available in this case. As regards the applicant's claim that a manufacturer in the *VW* case was accused of failing to distinguish between resellers not belonging to the distribution network, on the one hand, and intermediaries authorised by consumers, on the other (paragraph 159 of the Commission decision, cited in paragraph 21 above), it should be observed that in the *VW* case there was a good deal of additional evidence to support the conclusion that there were barriers to imports by consumers and by authorised intermediaries. No such additional evidence has been produced in this case.

53 Finally, as regards the reduction in the discounts granted to the applicant by Renault Rotterdam, it must be stated that Renault Rotterdam notified the applicant of the reduction on 21 May 1999, thus after the date of the contested decision. Consequently, the applicant cannot complain that the Commission failed to take that fact into account when it assessed the Community interest in pursuing the complaint.

54 As regards the second limb of the plea, alleging infringement of the obligation to state reasons, it must be observed that the contested decision clearly sets out the considerations of law and of fact which led the Commission to the conclusion that there was insufficient Community interest. Consequently, that limb of the plea is unfounded.

55 As regards the third limb of the plea, alleging that the investigative measures taken by the Commission were inadequate, it should be observed that the Commission enjoys a discretion as regards the extent to which it investigates a claim. It must balance the significance of the impact which the alleged infringement may have on the functioning of the common market, the probability of its being able to establish the existence of the infringement and the extent of the investigative measures required (see *Européenne automobile* v *Commission*, cited in paragraph 34 above, paragraph 42).

56 In the present case, the Commission asked Renault for explanations regarding the matters alleged in the complaint. The explanations provided, namely that the delivery periods referred to in the complaint were due to demand for the Scenic model exceeding the forecasts, were plausible at first sight. In order to prove that those explanations were incorrect the Commission would have had to take significant steps. The Commission's conclusion that additional investigative measures would have been disproportionate in view of the significance of the

alleged infringement and the likelihood of proving it cannot be regarded as a manifest error of assessment.

57 As regards in particular the complaint that it did not check the delivery periods, *inter alia* as to discrimination between French customers acting through authorised agents and Netherlands customers, it should be observed that according to the applicant's assertions in its observations on the communication under Article 6 of Regulation No 99/63, the average delivery period for its own customers was approximately four months, whereas it alleged that the delivery period for Netherlands customers was approximately four to six weeks for all Renault models. A difference of two to three months between the respective delivery periods is not enough by itself to establish the existence of an infringement, but is only one piece of evidence in that regard. Consequently, even if that aspect of an investigation would have been easy to carry out, the Commission's assessment that the investigative measures needed in order to be able to decide definitively whether there had been an infringement would be extensive and disproportionate to the significance of the alleged infringement is not manifestly incorrect.

58 It follows that the first plea is unfounded.

The second plea, alleging errors of fact and infringement of the right to a fair hearing

Arguments of the parties

59 The applicant's second plea comprises three limbs. In the first limb the applicant complains that in order to prove that the applicant acknowledged the withdrawal

of Renault Nederland's circular of 23 October 1996 the Commission refers to a letter of 16 October 1997, even though that letter was not written on behalf of the applicant but on behalf of the SPEA, an organisation to which the applicant has never belonged. Although in its letter of 17 July 1997 the applicant informed the Commission that the circular of 23 October 1996 had been withdrawn, it also complained about the continuation of the barriers at issue and informed the Commission that no agreement had been reached between itself and the manufacturer or its subsidiary.

60 The second limb of the plea concerns the Commission's statement that the applicant's customers had taken delivery of the vehicles they had ordered. The applicant again complains that the Commission relied on the letter of 16 October 1997 in support of that statement. In its own letter of 17 July 1997 the applicant did not state that the vehicles had been delivered, merely that Renault had indicated that they were in the process of being delivered. Some customers, however, had to wait for as long as nine months. It adds that it would have been easy for the Commission to enquire of the principals who had submitted complaints and the Commission would thereby have realised that they had not all taken delivery of the vehicles they had ordered. It would also have been easy to ask the applicant for a list of principals who had cancelled as a result of delays in delivery or non-delivery.

61 In the third limb of the plea, the applicant claims that the success of the Scenic model cannot explain the delivery periods. Those periods did not relate only to the Scenic model but to other models as well, amounting to around 45% of the orders it places. It complains that the Commission based its view on the technical explanations provided by Renault, which were not forwarded to it and which constitute evidence on which it has not been heard. The Commission also explained the lengthy delivery periods for the Espace model by drawing an analogy with the situation regarding the Scenic model. That analogy is dubious, since the Espace was not as successful as the Scenic during the period concerned.

Findings of the Court

62 As regards the first two limbs of the plea, it should be observed that the contested decision contains an error in that it attributes to the applicant a letter sent to the President of the Commission on 16 October 1997 on behalf of the SPEA. That error is not, however, of such a nature as to affect the validity of the contested decision. The Commission referred to that letter in finding that the applicant had acknowledged, first, that the circular from Renault Nederland of 23 October 1996 had been withdrawn and, second, that its customers had taken delivery of the vehicles ordered. However, in its letter of 17 July 1997 the applicant acknowledged that the Renault circular had been withdrawn.

63 Next, as regards the delivery of vehicles to its customers, the applicant had stated in its letter of 17 July 1997 that those vehicles were 'in the process of being delivered'. However, if despite Renault's promises to that effect the deliveries referred to in that letter did not take place, it was for the applicant to point that out to the Commission at the latest in its reply of 17 February 1998 to the communication under Article 6 of Regulation No 99/63, which it did not do. Lastly, although, according to the applicant, the Commission could easily have asked for evidence from itself and its principals, it would have been just as easy for the applicant to supply that evidence to the Commission on its own initiative. Consequently, the first two limbs of the second plea are unfounded.

64 As regards the complaint alleging infringement of the right to a fair hearing, made in the third limb of the plea, the applicant does not dispute the fact that it received, annexed to the communication under Article 6 of Regulation No 99/63, the technical explanations appended to Renault's letter of 24 July 1997, apart from a list of deliveries to its own principals. As for the letter itself, which was not forwarded to it by the Commission, its content is summarised clearly in

paragraph 4 of the abovementioned communication. The applicant therefore had the opportunity to submit its observations on the matter and did so in its reply.

65 Lastly, as regards the explanation for the delivery periods, it should be observed that the Commission's finding that most of the orders referred to in the complaint related to the Scenic model is well founded. Admittedly, in its reply to the communication under Article 6 of Regulation No 99/63 the applicant mentions six orders for other Renault models, which were placed after the complaint was lodged and after withdrawal of the circular in February 1997. The delivery periods for those vehicles were in the order of two and a half to five months, giving an average of slightly under four months. That additional information is not, however, of such a nature as to show the manifest incorrectness of the Commission's statement that the matters alleged in the complaint had ended and could be partly justified by the shortage of vehicles of the Scenic model.

66 Consequently, the second plea is unfounded.

67 It follows that the application for annulment of the contested decision is unfounded.

Costs

68 Under the first subparagraph of Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to pay the costs.**

Pirrung Potocki Meij

Delivered in open court in Luxembourg on 14 February 2001.

H. Jung A.W.H. Meij

Registrar President